

Before the Board of Zoning Adjustment, D. C.

Appeal No. 11872, of Sheridan-Kalorama Neighborhood Council, pursuant to Sections 8102 and 8206 of the Zoning Regulations from a determination of the Zoning Administrator that the use **of** the premises at 2125 S Street, N. W., Lots 9, 12 and 49 in Square 2532, by the Founding Church of Scientology of Washington, D. C. **is** that of a "church" within the meaning of the Zoning Regulations. The Board of Zoning Adjustment hearing was on the sole issue of whether or not the appeal was filed timely with the Board as required by ~~§~~ 2.21 of the Rules of Practice and Procedure.

HEARING DATE: February 19, 1975

EXECUTIVE SESSION: February 25, 1975

FINDINGS OF FACT:

1. On **May** 6, 1974, the Zoning Administrator, upon the advice of the Office of Corporation Counsel, ruled by letter that proposed uses of premises 2125 S Street, N. W. by the Founding Church of Scientology of Washington, D. C. ("Church") were within the meaning of a "church" under the Zoning Regulations. Notice of the ruling was then given to counsel for appellant by carbon copy of the letter-ruling. (Exhibit A to Motion to Dismiss.)

2. Appellant filed this appeal on January 10, 1975, eight months later.

3. This appeal was heard on February 19, 1975 on the issue of whether the appeal was timely filed so as to come within the appellate jurisdiction of this Board. See Sections 8102 and 8206 of the Zoning Regulations and ~~§~~ 2.21 of the Board's Rules of Practice and Procedure.

4. The Church, as property owner and as a party to this appeal, filed a Motion to Dismiss for lack of Jurisdiction on February 14, 1975, stating that the Board lacked jurisdiction to hear the appeal since the appeal was not **timely filed**. The specific bases of the Motion are that the appeal was (1) filed after an untimely and unreasonable delay of eight months, (2)

barred by laches in that appellant, with knowledge of the impending purchase of the property by the Church, failed to diligently challenge the ruling of the Zoning Administrator to the Church's substantial and irreparable prejudice, and (3) barred by **estoppel** in that the Church, in purchasing 2125 S Street, at a cost and subsequent expense of approximately \$350,000, reasonably relied upon (1) the May 6, 1974 ruling, (2) the duly issued certificate of occupancy and (3) the inaction of the appellant to challenge the May 6, 1974 ruling either judicially or administratively.

5. The Board heard testimony and argument from all parties to the appeal and makes the findings herein set forth on the basis of the testimony and evidence of record.

6. The Church's active interest in purchasing the property at 2125 S Street, N. W. was known to the appellant as early as October, 1973. (Exhibit D to Motion to Dismiss.) Written opposition to the Church's occupancy of said property was made as early as November 6, 1973. (Exhibit G to Motion to Dismiss.)

7. At the B.Z.A. public hearing on Application No. 11457 held October 17, 1973, the activities of the Church were described. Counsel for appellant was present and participated in this hearing (Exhibit P to Motion to Dismiss.)

8. A letter dated November 20, 1973 to the Board of Zoning Adjustment (Exhibit O to Motion to Dismiss) stated that appellant would oppose the occupancy of the premises by the Church if such use was "like or similar to that described in this proceeding (public hearing, October 17, 1973)." Members of the Council also met with the representatives of the Church.

9. On December 28, 1973, the Institute of Modern Languages, the owner of the subject property, offered appellant, or individual citizen-members of the Council the opportunity to purchase the property. (Exhibit Q to Motion to Dismiss.)

10. By letter dated February 20, 1974 to the President of appellant, a copy of which was sent to its counsel (Exhibit R to Motion to Dismiss), the then owner of 2125 S Street, N. W. notified appellant that, although it had offered the properties to appellant for sale and enumerating terms of sale, no responsive conclusions had been received. The letter further stated.

"If your group does not submit a reasonable offer by March 1, 1974, please be advised we do have

another offer at hand from the Founding Church of Scientology which we are prepared to accept and will use all our resources to finalize."

11. On March 3, 1974, the contract to purchase the property referenced in the February 20, 1974 letter was finalized between the Church and the Institute of Modern Languages. **This** contract was contingent upon:

"(a) Final approval (including termination of any administrative and/or judicial proceedings) by the District of Columbia for the **use** of the property satisfactory to the Purchaser and the resolution, which the Purchaser deems satisfactory, proceedings affecting the Property." (Exhibit H to Motion to Dismiss.)

12. By letter of March 7, 1974, counsel for appellant notified both the owner of the property and the Church of **its** continuing opposition to use of the property by the Church, (Exhibit I to Motion to Dismiss.)

13. On April 25, 1974, an application for a Certificate of Occupancy for Church use of the premises was filed by the Church with the District of Columbia. Information supporting that application, including a descriptive publication of the Church activities (Hubbard, Scientology), was furnished to the Zoning Administrator and Office of Corporation Counsel. (Exhibit J to Motion to Dismiss.) The information submitted described in detail the proposed church uses of the premises. On May 3, 1974, supplemental information describing the church uses was filed by the resident Minister with the Zoning Administrator. (Exhibit K to Motion to Dismiss.) The Zoning Administrator also knew of the nature of the church uses as described at the October, 1973 BZA hearing **on** Application No. 11457 and in supplemental information submitted to him on behalf of the Church upon request made by the then counsel for the Church within one week after the Zoning Administrator's letter of December 5, 1973. On or about May 3, 1974, the contract to purchase was extended to May 15, 1974. (Statement of Rev. Lynn McNeil, Exhibit C to Motion to Dismiss.)

14. On May 6, 1974, the Zoning Administrator approved church uses for the premises and gave notice of his ruling to counsel for appellant.

15. After receiving the May 6, 1974 ruling and knowing

of the opposition by appellant to the church's purchase and occupancy of the premises, the Church reasonably expected an immediate challenge to the ruling by appellant through either judicial or administrative means. (Statement of Rev. Lynn McNeil, Exhibit C to Motion to Dismiss and testimony.)

16. During the period from May 6, 1974 (appellant knew of the ruling as early as May 2, 1974) to June 6, 1974, appellant took no action either judicially or administratively to challenge the May 6, 1974 ruling and did not indicate to either the Church or the Zoning Administrator that it would or even might question the ruling, Nor did appellant seek any further information concerning the church uses from the Church.

17. On June 6, 1974, 30 days after the Zoning Administrator's ruling and pursuant to a final extension of the contract that expired that date, the Church made final settlement on the property at a cost of \$325,000, (Exhibit C to Motion to Dismiss and testimony at hearing.)

18. On June 7, a meeting was held where counsel for the church and appellant as well as the resident Minister and the president of the appellant association discussed the occupancy and use of the property. At that meeting, the Church received no indication from appellant of any intent to challenge either administratively or judicially either the May 6, ruling of the Zoning Administrator or the May 28, 1974 Certificate of Occupancy.

19. Not having challenged the May 6, 1974 ruling of the Zoning Administrator and knowing of the Church's substantial change of position on the basis of the ruling and inaction of appellant, appellant commenced on June 12, 1974 to write letters to the Zoning Administrator purportedly asking for a new ruling as to the church uses at the premises. See also letters of June 20, 1974, September 30, 1974 and December 9, 1974,

20. The Church activities questioned in appellant's letters to the Zoning Administrator could have been questioned just as well immediately after the May 6, 1974 ruling, It is not disputed that the uses questioned were previously known to appellant. Appellant at the outset of the hearing acknowledged that the May 6, 1974 ruling was the ruling appealed from.

21. The letters of appellant contained no information which was not substantially before the Zoning Administrator on or before his May 6, 1974 ruling and by letter of December 13, 1974, the May 6, 1974 ruling was merely confirmed. (Testimony of Zoning Administrator and Deputy Zoning Administrator at public hearing.) For example, the Church's practice of "auditing," which had previously been described in the October 17, 1973 BZA proceedings and in the information submitted to the Zoning Administrator on April 25 and May 3, 1974, was confirmed to be "an integral part of this particular religious practice and therefore a proper function of The Founding Church of Scientology." (Exhibit B to Motion to Dismiss.)

22. The only excuse given on behalf of appellant for not having challenged the May 6, 1974 ruling before January 10, 1975 was that appellant did not wish to get involved in contesting that the Founding Church of Scientology was a "church", although appellant states that it does not and did not concede such status. (Testimony of counsel for appellant at hearing.)

23. In addition to the expense of \$325,000 incurred through the purchase of 2125 S Street, N. W., the Church has expended \$25,000 in improving the property, has terminated leases to property on 19th Street and has made administrative changes--all in reliance upon the approvals of the District of Columbia and inaction by appellant. (Statement of Rev. Lynn McNeil, Exhibit C to Motion to Dismiss and Testimony at hearing.)

24. The Board takes notice of Sections 8102 and 8206 of the Zoning Regulations which articulate an aggrieved party may contest a determination of the Zoning Administrator, in reference to the granting or withholding of a Certificate of Occupancy, and authorizes the Board to exercise jurisdiction over such appeals.

25. Certificate of Occupancy No. B89356 issued on May 28, 1974, granting the use of the property in question as a church. The Board finds that the appellant's right to file an appeal came into fruition as, of the 28th Day of May, 1974, The date of the granting of the Certificate of Occupancy allowing the use in question.

CONCLUSIONS OF LAW:

Based upon the above Findings of Fact, the Board is of

the opinion that the Motion to Dismiss for lack of Jurisdiction should be granted.

1. The appellate jurisdiction of this Board is conferred by the Zoning Enabling Statute, § 5-420, D. C. Code (1973), as promulgated by the Zoning Commission in Zoning Regulations and Rules of Practice and Procedure. Section 2.21 of the Rules of Practice and Procedure requires that an appeal be "timely filed." This Board has no jurisdiction to hear appeals which are not timely filed.

2. The eight-month delay after receiving notice in filing an appeal of the Zoning Administrator's ruling is unreasonable and is therefore not "timely" within § 2.21 of the Rules of Practice and Procedure.

3. The Board is of the view that inherent in the "timely" requirement is a jurisdictional criteria that an appeal may not be brought after an unreasonable time. Even without such an express requirement, appeals must be brought within a reasonable period of time in order to invoke the appellate jurisdiction of the Board. The Board may not waive a jurisdictional impediment and, consequently, may not waive the requirement that an appeal be "timely" filed.

4. Even assuming the basic right to waive the "timely" requirement, this Board may not waive that requirement unless "good cause is shown." Appellant has failed to show any good reason why an appeal of the Zoning Administrator's May 6, 1974 ruling should be permitted eight months later to the substantial detriment of the Church.

5. The letter from the Deputy Zoning Administrator to appellant dated December 13, 1974, is not a ruling but is merely a reaffirmation of the May 6, 1974 ruling presented an adequate basis upon which appellant could have challenged the church uses. Appellant does not claim that matters now raised could not have been raised earlier.

6. The eight-month delay by the appellant in filing an appeal from the Zoning Administrator's ruling with knowledge of the ruling and of pendency of purchase of the property by the church was unreasonable and has caused substantial prejudice to the Church. Therefore, this appeal is barred under the doctrine of laches.

7. The Church carefully and reasonably relied upon the ruling of the Zoning Administrator, the certificate of occupancy and the failure of the appellant to take any administrative or judicial appeal from the May 6, 1974 ruling until January 10, 1975. On the basis of such reasonable reliance, the Church substantially and irreparably changed its position by purchasing 2125 S Street, N. W. at a price of \$325,000, incurring additional expenses totalling approximately \$25,000, in terminating leasehold interests and in making administrative changes. The doctrine of equitable estoppel requires that this appeal be dismissed.

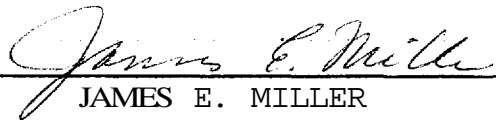
ORDERED:

That the Motion to Dismiss for Lack of Jurisdiction be GRANTED and that BZA Appeal No. 11872 be DISMISSED

VOTE: 3-2 (Mr. Scrivener and Lilla Burt Cummings, Esq. Dissenting).

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED By:


JAMES E. MILLER
Secretary to the Board

FINAL DATE OF ORDER: **APR 14 1975**